IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5889 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DIVISIONAL CONTROLLER

Versus

GANDABHAI NENAJI CHAUDHARI

Appearance:

1. Special Civil Application No. 5889 of 2002

MS MONALI H BHATT for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/07/2002

ORAL JUDGEMENT

#. Rule. Mr.Mishra waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner - Corporation has challenged the award passed by the Labour Court, Palanpur in Reference (LCP) No.2 of 1999. By the aforesaid award, the Labour Court has passed the order of reinstatement in favour of the respondent workman without any back wages. The respondent was dismissed from service by the petitioner Corporation after holding appropriate inquiry on the charge of remaining absent without leave. The said dismissal order was challenged by way of the aforesaid reference before the Labour Court. The Labour Court came to the conclusion that the penalty of removal is on higher side, and, therefore, while exercising the powers under section 11-A of the Industrial Disputes Act, the order of reinstatement without back wages is passed.

#. On behalf of the petitioner - Corporation, it is argued by Ms.Bhatt that the Labour Court has committed an error apparent on the face of the record as even though the past record which is produced before the Labour Court clearly shows that, in past, the concerned employee was subjected to the penalty of removal for remaining unauthorised absent. The said fact is not considered by the Labour Court at all. Considering the past record, which is at page 19, I am also convinced that the Labour Court has not properly considered the said document at all and unfortunately, absolutely casual approach is exhibited by observing that, no similar type of misconduct found to have been committed by the concerned workman in the past. A driver serving in the petitioner-Corporation supposed to be punctual in duty and even in the past also he found to have remained absent without leave.

#. Considering the aforesaid aspect, in my view, withholding of full back wages cannot be said to be an adequate punishment, and, therefore, though the order of reinstatement is confirmed without back wages, in my view, over and above the same, the concerned workman should undergo the penalty of withholding of two increments with future effect, so that, there may have some deterrent effect upon the concerned workman. Under these circumstances, the award of the Labour Court is modified and the order of reinstatement without back wages is confirmed subject to the penalty of withholding of two increments with future effect. This petition is accordingly partly allowed. The Corporation may comply with this order within a period of one month from today. It is needless to say that the concerned workman will be entitled to the back wages from the date of award of the Labour Court till he is actually reinstated in service.

Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)

(pathan)